

(4) The planning process included public notice that the planning products produced in the planning process may be adopted during a subsequent environmental review process in accordance with this section.

(5) During the environmental review process, the relevant agency has—

(A) made the planning documents available for public review and comment by members of the general public and Federal, State, local, and tribal governments that may have an interest in the proposed project;

(B) provided notice of the intention of the relevant agency to adopt or incorporate by reference the planning product; and

(C) considered any resulting comments.

(6) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

(7) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

(8) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

(9) The planning product is appropriate for adoption or incorporation by reference and use in the environmental review process for the project and is incorporated in accordance with, and is sufficient to meet the requirements of, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 1502.21 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the FAST Act).

(10) The planning product was approved within the 5-year period ending on the date on which the information is adopted or incorporated by reference.

(e) EFFECT OF ADOPTION OR INCORPORATION BY REFERENCE.—Any planning product adopted or incorporated by reference by the relevant agency in accordance with this section may be—

(1) incorporated directly into an environmental review process document or other environmental document; and

(2) relied on and used by other Federal agencies in carrying out reviews of the project.

(f) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—This section does not make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.

(2) TRANSPORTATION PLANNING ACTIVITIES.—Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.

(3) PLANNING PRODUCTS.—This section does not affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or restrict the initiation of the environmental review process during planning.

(Added Pub. L. 112-141, div. A, title I, §1310(a), July 6, 2012, 126 Stat. 540; amended Pub. L. 114-94, div. A, title I, §1305, Dec. 4, 2015, 129 Stat. 1386.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b)(1) and (d)(9), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of the FAST Act, referred to in subsec. (d)(9), is the date of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

#### AMENDMENTS

2015—Pub. L. 114-94 amended section generally. Prior to amendment, section related to integration of planning and environmental review.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 169. Development of programmatic mitigation plans

(a) IN GENERAL.—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

(b) SCOPE.—

(1) SCALE.—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

(2) RESOURCES.—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

(3) PROJECT IMPACTS.—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

(4) CONSULTATION.—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

(c) CONTENTS.—A programmatic mitigation plan may include—

(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

(3) standard measures for mitigating certain types of impacts;

(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(d) PROCESS.—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—

(1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

(3) consider any comments received from such agencies and the public on the draft plan; and

(4) address such comments in the final plan.

(e) INTEGRATION WITH OTHER PLANS.—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(f) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other Federal environmental law.

(g) PRESERVATION OF EXISTING AUTHORITIES.—Nothing in this section limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Added Pub. L. 112-141, div. A, title I, §1311(a), July 6, 2012, 126 Stat. 543; amended Pub. L. 114-94, div. A, title I, §1306, Dec. 4, 2015, 129 Stat. 1389.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (f) and (g), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### AMENDMENTS

2015—Subsec. (f). Pub. L. 114-94 substituted “shall give substantial weight to” for “may use” and inserted “or other Federal environmental law” before period at end.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note

under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 170. Funding flexibility for transportation emergencies

(a) IN GENERAL.—Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.

(b) DECLARATION OF EMERGENCY.—Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(c) REPAYMENT.—Funds used under subsection (a) shall be repaid to the program from which the funds were taken in the event that such repairs or replacement are subsequently covered by a supplemental appropriation of funds.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED FUNDS.—The term “covered funds” means any amounts apportioned to a State under section 104(b), other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d), but including any such amounts required to be set aside for a purpose other than the repair or replacement of a transportation facility under this section.

(2) TRANSPORTATION FACILITY.—The term “transportation facility” means any facility eligible for assistance under section 125.

(Added Pub. L. 112-141, div. A, title I, §1515(a), July 6, 2012, 126 Stat. 573.)

#### REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### [§§ 181 to 190. Renumbered §§ 601 to 610]

#### CODIFICATION

Subchapter II heading “INFRASTRUCTURE FINANCE” was struck out and sections 181 to 190, which comprised subchapter II of this chapter, were renumbered sections 601 to 610, respectively, and transferred to follow the analysis of chapter 6 of this title, by Pub. L. 109-59, title I, §1602(b)(6)(B), (d), Aug. 10, 2005, 119 Stat. 1247, as amended by Pub. L. 110-244, title I, §101(f), June 6, 2008, 122 Stat. 1574.